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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,289	10/30/2000	Takaaki Inoue	001448	4397

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EXAMINER

WARDEN, JILL ALICE

ART UNIT PAPER NUMBER

1743

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/698,289

Applicant(s)

INOUE ET AL.

Examiner

Jill A. Warden

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al. (USP 6,489,168 B1).

Wang et al. teach an analysis and control system comprising a monitor 150 for displaying vessels 210 housed in a reaction block 110 and a selection means 600, 680 for selecting one or more vessels displayed on the screen based on data provided by the user 170/150 or storage means 180, such that the selector can modify the operation parameters (e.g. temperature, pH, etc.) related to the selected vessels (column 12, lines 46-52, Figs. 6a-6b). Moreover, Wang et al. teach a protocol creation means 700 for creating a protocol based on data supplied from the selector and displaying the vessels together with operation contents of the vessels (Figs. 7a-8, claim 3). Additionally, Wang et al. teach an analysis means 145 or protocol line analysis means for picking out the operation contents supplied by the user/storage and creating the operational procedure related to the selected vessel (Figs. 1,3).

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Babson et al. (USP 5,316,726).


Babson et al. teach an analysis and control system comprising a display device 16 for displaying vessels housed in an analyzer system and a selection means (e.g. bar codes and readers 44, 71) for providing data which is displayed on the screen of the display device. The system further includes a keyboard 18 which may be provided from the operator to input patient information, or to perform other analysis and control functions (column 3, lines 39-60). The operator places particular assay tubes in particular carrier tubes to design the protocol for the analyzer. "[T]he number and type of immunoassays to be performed on any one sample depends on the number and type of assay tubes selected by the [operator]." (Column 11, lines 19-36) This use of tubes by the operator, in conjunction with the bar code readers, keyboard and computer is considered equivalent to applicant's protocol creation means.

### ***Response to Arguments***

Applicants' arguments filed June 28, 2003 have been fully considered and are persuasive with respect to the rejections in view of Inoue, et al. These rejections have been withdrawn. With respect to the clarification of the rejection in view of Babson, et al., such is provided above. With respect to Wang, et al., applicants argue the rejection moot in view of the amendment. However, no amendment has been submitted. Therefore, this rejection has been maintained.

**Conclusion**

Any inquiry concerning this communication should be directed to Jill A. Warden  
at telephone number (703) 308-4037.

  
Jill A. Warden  
SPE  
Art Unit 1743